

---

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

GN Docket No. 04-163

---

*In the Matter of*

**Wireless Broadband Access Task Force Report**

---

**COMMENTS OF CINGULAR WIRELESS LLC  
AND BELLSOUTH CORPORATION**

James G. Harralson  
Charles P. Featherstun

J. R. Carbonell  
Carol L. Tacker  
M. Robert Sutherland

BELLSOUTH CORPORATION  
1155 Peachtree Street, N.E.  
Suite 1800  
Atlanta, GA 30309

Telephone: (404) 249-3855

Counsel for BellSouth

CINGULAR WIRELESS LLC  
5565 Glenridge Connector  
Suite 1700  
Atlanta, GA 30342

Telephone: (404) 236-6364

Counsel for Cingular Wireless

April 22, 2005

## Table of Contents

<b>I.</b>	<b>Introduction and Summary.</b>	<b>1</b>
<b>II.</b>	<b>The Commission must ensure that there is adequate licensed spectrum for wireless broadband access.</b>	<b>2</b>
<b>III.</b>	<b>The Commission should ensure regulatory certainty to promote innovation and investment by licensees.</b>	<b>6</b>
	<b>A. Wireless broadband Internet access is an interstate information service subject to the Commission's exclusive jurisdiction.</b>	<b>6</b>
	<b>B. The Commission has ample jurisdiction to adopt social welfare requirements for wireless broadband providers.</b>	<b>7</b>
	<b>C. To the extent that a wireless broadband service is a telecommunications service, it should be classified as a Commercial Mobile Radio Service under 47 U.S.C. § 332(c).</b>	<b>9</b>
<b>IV.</b>	<b>The Commission should affirm that wireless broadband licensees have exclusive use of and control over their licensed spectrum.</b>	<b>10</b>
	<b>A. Efficient spectrum utilization should be achieved through secondary market transactions, not regulatory fiat.</b>	<b>11</b>
	<b>B. The Commission should issue a policy statement that it will no longer consider opportunistic use of licensed spectrum.</b>	<b>12</b>
<b>V.</b>	<b>Conclusion</b>	<b>13</b>

In the Matter of )  
 )  
Wireless Broadband Access Task Force Report ) GN Docket No. 04-163

<sup>1</sup> The Task Force consists of Commission staff personnel from several bureaus. The Public Notice indicated that neither the Report nor any of the recommendations contained therein have been voted upon by the Commission or necessarily reflect the views of the Commission.

Commission can best facilitate this competition by reducing regulatory risks to a minimum. If the playing field is level and unencumbered by regulation, competitive market forces will pick the winners and losers, which will best serve the public interest.

Cingular and BellSouth have identified two major initiatives that the Commission can take to reduce regulatory uncertainty and promote competitive markets. First, the Commission can ensure that there is sufficient licensed spectrum for wireless broadband services. Second, the Commission can provide the regulatory certainty that will promote innovation and investment by licensees. If the Commission delivers on these two initiatives, market forces will ensure that consumer demand will be met in an efficient and cost effective manner.

**II. The Commission must ensure that there is adequate licensed spectrum for wireless broadband access.**

The Task Force Report recognizes that a crucial ingredient to the development of wireless broadband networks is the availability of sufficient spectrum.<sup>2</sup> Providing broadband services requires additional bandwidth. For example, Cingular currently is rolling out 3G services utilizing Universal Mobile Telecommunications System (UMTS) technology. UMTS requires a *minimum* of 10 MHz of dedicated spectrum (5 MHz uplink paired with 5 MHz downlink). Since all UMTS customers in a sector share the download bandwidth, additional UMTS channels will be needed to maintain download speeds as more subscribers demand access to 3G services. Cingular has recently demonstrated to the Commission that three 10 MHz UMTS blocks, a total of 30 MHz, will be needed to meet demand for 3G services in most areas.<sup>3</sup> This is consistent with

---

<sup>2</sup> Task Force Report at 46 *et seq.*

<sup>3</sup> See ULS File No, 0001656065, Description of Transaction, Public Interest Statement and Waiver Request of Cingular Wireless Corporation, FCC Form 603, ex. 1, WT Docket No. 04-70 (filed March 28, 2004)

international experience, where many countries have granted licenses for as much as 40 MHz of UMTS spectrum.<sup>4</sup> The Commission should continue its initiatives to make additional spectrum available for licensed wireless broadband services.

The Task Force Report acknowledges the efforts that the Commission has undertaken in recent years to make more licensed spectrum available for wireless broadband access.<sup>5</sup> There are several ways in which the Commission can minimize the regulatory risk associated with making additional spectrum available.

First, as new licensed spectrum becomes available, the Commission should stage the auctions so that all new allocations do not hit the market simultaneously or near-simultaneously. Staging auctions would allow interested bidders to factor spectrum coming into the market in their business plans and bidding strategies. Staging would also allow financial markets to digest recent auction purchases and begin recouping investments.

Second, Cingular and BellSouth agree with the Task Force Report that improving and streamlining the allocation and assignment process is critical to ensuring adequate spectrum is available for wireless broadband on a timely basis.<sup>6</sup> Shortening the time it takes to get spectrum out of the government's hands and into the market is critical to the roll-out of wireless broadband services that consumers are demanding.

---

(Public Interest Statement); Public Interest Statement, Attachment 2, Declaration of William Hogg and Mark Austin at 21 (Hogg/Austin Declaration). *See also, Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 04-70, 19 FCC Rcd 21522 ¶¶ 224-225 (2004) ("We agree with the Applicants that the additional spectrum the combined entity will have available, in terms of both capacity and geographic coverage, should facilitate the combined entity's deployment of more robust and ubiquitous advanced services.")

<sup>4</sup> *See* UMTS World, UMTS/3G Licenses, at <http://www.umtsworld.com/licenses.htm> (visited April 13, 2005) showing that many countries have granted licenses for as much as 40 MHz of UMTS spectrum.

<sup>5</sup> Task Force Report at 46 *et seq.*

<sup>6</sup> Task Force Report at 61.

Third, Cingular and BellSouth agree with the Task Force that the Commission should further automate the spectrum licensing process to shorten the time between auction and licensing. The Commission should eliminate the requirement that bidders file duplicate information in pre- and post- auction submissions and should centralize and link bidder or licensee ownership information currently reported on multiple forms.<sup>7</sup> Such improvements in the licensing process will enable wireless broadband providers to make their services available in a more timely and efficient manner.

Finally, Cingular and BellSouth support the suggestion by the Task Force that the Commission simultaneously allocate and propose service rules for spectrum, as it did in the Advanced Wireless Services proceeding, providing that the spectrum auctions are properly staged to allow efficient assimilation of the new spectrum by the market.<sup>8</sup> Simultaneously allocating new spectrum and proposing new service rules will enable spectrum to be put up for auction sooner with clear knowledge of the service rules that are going to govern the provision of services over the spectrum being licensed.

The Task Force Report urges the Commission to expedite the digital television (DTV) transition to free more spectrum for wireless broadband. The Report suggests that the Commission work with Congress to consider mandating a hard deadline for completion of the DTV transition.<sup>9</sup> Cingular and BellSouth concur. Clearing the 700 MHz bands expeditiously will allow wireless broadband providers and public safety entities to plan and deploy their networks in an efficient fashion.

The Task Force Report recommends that the Commission consider making its rules flexible enough to facilitate asymmetric pairing of spectrum bands. This would

---

<sup>7</sup> Task Force Report at 61.

<sup>8</sup> *Id.*

<sup>9</sup> Task Force Report at 62-63.

accommodate the higher volume of downstream traffic associated with broadband access to download large files.<sup>10</sup> As the Report notes, Cingular has been a strong advocate of asymmetric pairing of spectrum bands in the AWS Allocations proceeding, and continues to support asymmetric pairing of spectrum bands in this proceeding.<sup>11</sup> At a minimum, the Commission should ensure that its rules do not prevent an operator from combining multiple spectrum bands to form a single service.<sup>12</sup>

The Task Force recommends that the Commission adopt more “flexible use” policies under which licensees can deploy the technologies that best fit their business plans and the demands of their customers, so long as the doing so complies with the technical rules of the license and does not cause interference to adjacent licensees.<sup>13</sup> The Commission should continue to allocate spectrum with service rules that provide licensees the flexibility to choose which technology to deploy and which services to offer. Post auction, the Commission must continue to stand by these principles to ensure an orderly and efficient market. The Commission must provide bidders with a clear and unambiguous definition of spectrum user’s rights and responsibilities that provide certainty as to the rights that are being auctioned. This will facilitate involvement by applicants, equipment manufacturers and the financial community in the auction process.

In addition to the recommendations made by the Task Force, Cingular and BellSouth recommend additional steps that the Commission should take to make the auction process more efficient and reduce regulatory uncertainty. These recommendations will allow potential bidders to have a full understanding of what they

---

<sup>10</sup> Task Force Report at 63.

<sup>11</sup> Task Force Report at 63, fn. 211.

<sup>12</sup> Task Force Report at 63.

<sup>13</sup> Task Force Report at 64.

are bidding on and provide regulatory certainty. The Commission should disclose clearing requirements, including time frames and relocation costs. Relocation issues must be known and predictable if potential bidders are to accurately value the spectrum being auctioned. The Commission also should specify the interference criteria, i.e., is sharing of spectrum or opportunistic use of the spectrum going to be allowed. Any opportunistic use of spectrum must be specified prior to auction and should not be allowed in licensed bands post auction unless potential bidders were made aware of this possibility prior to bidding.

**III. The Commission should ensure regulatory certainty to promote innovation and investment by licensees.**

In addition to making adequate licensed spectrum available to wireless broadband providers, the Commission should take the steps necessary to reduce the regulatory uncertainty facing current and prospective providers of wireless broadband services. Specifically, the Commission should eliminate doubt by declaring wireless broadband services to be interstate information services subject to the Commission's exclusive jurisdiction. Second, the Commission should affirm that spectrum licensees have exclusive use of and control over their licensed spectrum. Taking these two steps to remove regulatory uncertainty will increase auction values, stimulate investment, encourage creation of secondary markets, facilitate development of equipment and provide certainty to capital markets.

**A. Wireless broadband Internet access is an interstate information service subject to the Commission's exclusive jurisdiction.**

The Task Force recommends that the Commission provide additional regulatory certainty "through the establishment of a consistent national framework applicable to



wireless broadband services...”<sup>14</sup> The Report notes that the Commission already has classified broadband Internet access provided via cable modem as an information service, and has tentatively concluded that wireline broadband Internet access is an information service. It recommends that the Commission classify wireless broadband Internet access as an information service as well.<sup>15</sup> The Task Force also notes that the portable and mobile features of wireless broadband make it impractical to determine the geographic location of users, thereby justifying the Commission to classify wireless broadband services as “interstate”.<sup>16</sup>

Cingular and BellSouth agree. Wireless broadband Internet access services are interstate information services subject to the Commission’s exclusive jurisdiction under Title I of the Communications Act. To the extent that wireless broadband Internet access is offered as a single, unified service, the transmission component should be deemed “telecommunications” and not a “telecommunications service.” Most other wireless broadband services will involve interaction with stored data and thus also would be properly classified as information services. The Commission should explicitly preempt any state regulation of wireless broadband information services. As the Task Force Report states, “Adopting such an interpretation could help create a federal deregulatory framework that would allow wireless broadband services to flourish.”<sup>17</sup>

**B. The Commission has ample jurisdiction to adopt social welfare requirements for wireless broadband providers.**

Classifying wireless broadband services as interstate information services will not prevent the Commission from exercising jurisdiction to further certain public policy

---

<sup>14</sup> Task Force Report at 66.

<sup>15</sup> Task Force Report at 68-69.

<sup>16</sup> Task Force Report at 71.

<sup>17</sup> *Id.*

goals. For example, Cingular and BellSouth support protection of the federal Universal Service Fund (USF) through the Commission's exercise of jurisdiction to require all IP-enabled service providers, including wireless broadband service providers, to contribute to USF if their services are connected to the public switched telephone network.<sup>18</sup> This would expand the base of USF contributors and ensure neutrality among providers of competing services.<sup>19</sup>

The Commission's jurisdiction over other public policy areas is not limited to common carriers. The Commission has jurisdiction over numbering resources under Section 251(e) that is not limited to providers of telecommunications services.<sup>20</sup> This section provides the Commission with jurisdiction to address how IP-based service providers should obtain and use numbering resources. The disability access requirements of Section 255 of the Act extend to manufacturers and non-common carrier providers of telecommunications services.<sup>21</sup> This section obligates the Commission to address disability access issues without regard to whether the service provider is a telecommunications common carrier.

To the extent that wireless broadband providers are classified as information service providers rather than telecommunications service providers, the Commission has ancillary jurisdiction under Title I to address public policy issues raised by wireless broadband services. The Commission has a general duty under Title I of the Act to "make available, so far as possible . . . a rapid, efficient, Nationwide, and world-wide

---

<sup>18</sup> See *In the Matter of IP-Enabled Services*, WC Docket No. 04-36; *Petition of SBC Communications for forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, WC Docket No. 04-29, Reply Comments of Cingular Wireless LLC at 12-14 (July 14, 2004).

<sup>19</sup> See 47 U.S.C. § 254(d), which expressly authorizes the Commission to extend USF contribution obligations to "any other provider of interstate telecommunications . . . if the public interest so requires."

<sup>20</sup> 47 U.S.C. § 251(e)(1).

<sup>21</sup> 47 U.S.C. § 255(b) and (c).

wire and radio communication service with adequate facilities at reasonable charges.”<sup>22</sup>

The Commission has jurisdiction under Title I to regulate non-common carriers as long as the “assertion of jurisdiction is ‘reasonably ancillary to the effective performance of the Commission’s various responsibilities.’”<sup>23</sup> At a minimum, the Commission’s ancillary jurisdiction extends to wireless broadband providers whose services utilize the PSTN to originate or terminate traffic, or which compete with and replace existing services already regulated by the Commission.<sup>24</sup>

The Commission also has sufficient authority under Title I to address national security and public safety needs where appropriate. However, the Commission should not delay the roll-out of advanced wireless broadband services until they are CALEA and E911 compliant. The Commission previously has refrained from imposing these requirements on nascent services until technological solutions can be developed.<sup>25</sup> It should apply the same model to wireless broadband services.

**C. To the extent that a wireless broadband service is a telecommunications service, it should be classified as a Commercial Mobile Radio Service under 47 U.S.C. § 332(c).**

As discussed above, the appropriate regulatory classification of most wireless broadband services is interstate information services subject to exclusive federal jurisdiction under Title I of the Communications Act. However, to the extent that any wireless broadband service is classified as a telecommunications service, it should be

---

<sup>22</sup> 47 U.S.C. § 151.

<sup>23</sup> *Digital Broadcast Content Protection*, 18 FCC Rcd 23550, 23563 ¶ 29 (2003).

<sup>24</sup> *See, e.g., United States v. Southwestern Cable Company*, 292 U.S. 157, 178 (1968) (Commission jurisdiction over the cable industry upheld because cable competes with local broadcasters regulated by the Commission).

<sup>25</sup> *See, e.g., Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 11 FCC Rcd 18676, 18717-18 (1996) (exempting Mobile Satellite Services, 220 MHz licensees and multilateration Location and Monitoring Services from E911 obligations due to infancy of services and technical limitations).

classified as a Commercial Mobile Radio Service regulated under Section 332 of the Communications Act. The Task Force Report notes the numerous conflicts that have taken place over the delineation between “rate and entry” regulation, which is exclusively federal, and “other terms and conditions” where Congress has reserved a role for state regulators. The Report recognizes that continued uncertainty will adversely affect “investment in and nationwide deployment of wireless networks and services critical to this country’s broadband future.”<sup>26</sup> Cingular and BellSouth urge the Commission to define as narrowly as legally permissible the role of state and local regulators in the roll out of wireless broadband networks and services. The ability to roll-out nationwide wireless broadband service plans will be severely jeopardized if providers are required to comply with different regulatory requirements in 50 state jurisdictions.

**IV. The Commission should affirm that wireless broadband licensees have exclusive use of and control over their licensed spectrum.**

Congress has clearly expressed its preference that competitive market forces rather than regulation shape the CMRS marketplace.<sup>27</sup> To facilitate this Congressional mandate, the Commission has stated its intention “to place ultimate reliance on the market, rather than on regulation, to direct the course of development in the CMRS and other markets.”<sup>28</sup> A licensee should have the sole right to use (or lease) its assigned spectrum. Congress explicitly recognized this fact when it granted the Commission authority to auction spectrum rights. Congress declared:

---

<sup>26</sup> Task Force Report at 72-73.

<sup>27</sup> See 47 U.S.C. §§ 10, 11.

<sup>28</sup> *1998 Biennial Regulatory Review: Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, 17 FCC Rcd 9219, 9222 (1999).

*Spectrum is a scarce resource, and thus every exclusive license granted denies someone else the use of that spectrum. This is what give[s] spectrum a market value.*<sup>29</sup>

There would be little point in auctioning spectrum licenses if the successful bidder did not receive a protected, unique interest in that spectrum. In a spectrum management system that relies inherently on license auctions, it is essential that rights and responsibilities be defined without ambiguity. Clear and certain rights to licensed spectrum are essential if a licensee is to be willing to bid full value for the spectrum and invest in the facilities needed to make efficient and productive use of the spectrum in providing services to its customers. If the Commission auctions spectrum with a promise of exclusivity and then undermines that exclusivity by forcing the licensee to allow unlicensed opportunistic devices to operate in that spectrum band, potential bidders will be reluctant to bid full value in future spectrum auctions. Likewise, a licensee may not invest the billions of dollars needed to develop and deploy new platforms for wireless broadband services if these platforms become subject to interference caused by opportunistic devices. The Commission should rely on secondary market transactions, rather than regulatory fiat, to facilitate efficient use of licensed spectrum.

**A. Efficient spectrum utilization should be achieved through secondary market transactions, not regulatory fiat.**

The Commission's recent actions in extending its Part 15 Rules to licensed spectrum and allowing ultra-wideband devices to make opportunistic use of licensed spectrum have already undercut the auction process and had a chilling effect on innovation. If the Commission truly believes that these devices can operate in licensed spectrum without causing harmful interference, it should permit secondary market

---

<sup>29</sup> H.R. Rep. No. 103-111, 103<sup>rd</sup> Cong. 1st Sess. 249 (1993) *reprinted in* 1993 U.S.C.C.A.N. 378, 576 (emphasis added).

transactions to develop between licensees and those seeking secondary access to the spectrum. Forcing licensees to accept interference from unlicensed devices by regulatory fiat not only undercuts the auction process, but innovation and secondary markets as well.

As the Commission's Technology Advisory Council has noted:

The prospect of spending development dollars for equipment and services which may be rendered worthless by perfectly legal interference from another system has an appropriately chilling effect on technology and service development. . .<sup>30</sup>

Market forces provide incentives for licensees to develop techniques that will facilitate efficient sharing of spectrum by multiple users. A licensee with truly exclusive spectrum rights will lease spectrum for new, innovative uses by others if it makes economic and technical sense. There is no need for the Commission to force spectrum sharing obligations on Commission licensees.

**B. The Commission should issue a policy statement that it will no longer consider opportunistic use of licensed spectrum.**

The damage that has been done by the Commission's consideration of forced easements/underlays/overlays of licensed spectrum is not necessarily irrecoverable. The Commission should issue proactively a policy statement that it will not consider in the future mandating opportunistic use of licensed spectrum. The Commission should close its "interference temperature" proceeding.<sup>31</sup> Only in spectrum bands set aside specifically for unlicensed use or in spectrum bands designated for "hybrid" use<sup>32</sup> should such mechanisms be considered. It has been demonstrated that opportunistic use

---

<sup>30</sup> FCC Technological Advisory Council II, Sixth Meeting Report at 14 (Sept. 18, 2002).

<sup>31</sup> Establishment of an Interference Temperature Metric to Quantify and Manage Interference and to Expand Available Unlicensed Operation in Certain Fixed, Mobile and Satellite Frequency Bands, ET Docket No. 03-237, *Notice of Inquiry and Notice of Proposed Rulemaking*, FCC 03-289 (rel. November 28, 2003) ("*Interference Temperature NOI/NPRM*").

<sup>32</sup> E.g., the 3650-3700 MHz band.

schemes will have a dramatic negative effect on licensed carriers' capacity and coverage and would further constrain the ability of licensees to meet the demand for wireless broadband access and 3G services.<sup>33</sup> The Commission should remove this regulatory uncertainty by disclaiming any intention to force licensees to accept interference from such schemes.

## **V. Conclusion.**

The Commission can best promote the deployment of wireless broadband technology in licensed spectrum by removing regulatory uncertainty that currently overhangs the market. The Task Force Report has many excellent suggestions for ways to provide more certainty to existing and potential licensees. Ensuring the availability of adequate spectrum, streamlining the licensing process, asserting exclusive federal jurisdiction over wireless broadband, and reasserting the rights of licensees to exclusive control over their spectrum will promote the widespread, rapid and efficient roll-out of wireless broadband services to the American public.

Respectfully submitted,

BELLSOUTH CORPORATION

CINGULAR WIRELESS LLC

James G. Harralson  
Charles P. Featherstun  
1155 Peachtree Street, N.E.  
Suite 1800  
Atlanta, GA 30309  
(404) 249-3855

J. R. Carbonell  
Carol L. Tacker  
M. Robert Sutherland  
5565 Glenridge Connector  
Suite 1700  
Atlanta, GA 30342  
(404) 236-6364

*Its Attorneys*

*Its Attorneys*

April 22, 2005

---

<sup>33</sup> *Interference Temperature NOI/NPRM*, Cingular and BellSouth Reply Comments at 6 (May 5, 2004).